

MR01

Particulars of a charge

13/108825
laserform

A fee is payable with this form.
Please see 'How to pay' on the
last page.


You can use the WebFiling service to file this form online.
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☒ **What this form is NOT for**
You may not use this form to
register a charge where there is no
instrument. Use form MR08.

For further information, please
refer to our guidance at:
www.companieshouse.gov.uk

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

 You **must** enclose a certified copy of the instrument with this form. This must be scanned and placed on the public record. **Do not send the original.**



SCT 15/02/2016 #112
COMPANIES HOUSE

For official use

1 Company details

Company number S C 4 8 4 8 9 1
Company name in full EARLS GATE ENERGY CENTRE LIMITED

→ **Filing in this form**
Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date d0 d9 m0 m2 y2 y0 y1 y6

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge.

Name HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
(AS SECURITY AGENT)

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below.

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge.

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4 Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

N/A

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

5 Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☐ Yes

☒ No

6 Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☒ Yes Continue

☐ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ Yes

7 Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

8 Trustee statement ^①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

^① This statement may be filed after the registration of the charge (use form MR06).

9 Signature

Please sign the form here.

Signature

Signature



☒ FOR AND ON BEHALF OF SHEPHERD AND WEDDERBURN LLP
ACTING FOR THE SECURITY AGENT

This form must be signed by a person with an interest in the charge.

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name M1965.2367/RSS/AMK

Company name
Shepherd & Wedderburn

Address 1 Exchange Crescent

Conference Square

Post town Edinburgh

County/Region

Postcode E H 3 8 U L

Country UK

DX DX 551970 EDINBURGH 53

Telephone 0131 473 5369



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 484891

Charge code: SC48 4891 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 9th February 2016 and created by EARLS GATE ENERGY CENTRE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th February 2016.

Given at Companies House, Edinburgh on 19th February 2016



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



SHEPHERD+ WEDDERBURN

BOND AND FLOATING CHARGE

by

Earls Gate Energy Centre Limited
as Chargor

in favour of

HSBC Corporate Trustee Company (UK) Limited
as Security Agent

of all its property and undertaking

We hereby certify that, save for material redacted
pursuant to s.859G of the Companies Act 2006,
this is a true copy of the original

Signed: Andrew Vines

Date: 15/02/16

For and on behalf of Shepherd and Wedderburn LLP

Shepherd and Wedderburn LLP
5th Floor, 1 Exchange Crescent
Conference Square
Edinburgh
EH3 8UL
DX 551970 Edinburgh 53
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BOND AND FLOATING CHARGE

by

- (1) **EARLS GATE ENERGY CENTRE LIMITED**, a company incorporated under the Companies Acts in Scotland (registered number SC484891) whose registered office is at CMS Cameron McKenna LLP, 191 West George Street, Glasgow G2 2LD (the "**Chargor**");

in favour of

- (2) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, incorporated under the Companies Acts in England and Wales (registered number 6447555) having its registered office at 8 Canada Square, London E14 5HQ in its capacity as Security Agent.

1. Interpretation

1.1 Expressly defined terms

In this Charge, the following words and phrases have the specified meanings.

"**the Act**" means the Companies Act 1985.

"**Applicable Representations**" means those representations and warranties set out in clause 22 (*Representations*) of the Facilities Agreement other than those at clause 22.12 (*No misleading information*) and 22.19 (*Group Structure Chart*).

"**Applicable Undertakings**" means those undertakings set out in clauses 25.1 (*Authorisations*) to 25.7 (*Change of business*) inclusive, 25.12 (*Disposals*) and 25.18 (*Insurance*) of the Facilities Agreement in each case so far as applicable to the Chargor.

"**Book Debts**" means (a) all present and future book and other debts, revenues and monetary claims of or owing to the Chargor and (b) all rights and claims of whatever nature now, or which may at any time be, held or enjoyed by the Chargor against third parties and against any security and guarantees in respect of such debts, revenues or claims;

"**Charged Assets**" means the whole of the property (including uncalled capital) which is or may be from time to time while this Charge is in force comprised in the property and undertaking of the Chargor.

"**COMI**" means centre of main interests (as that term is used in Article 3(1) of the EC Regulation).

"**Debenture**" means the composite debenture dated 31 July 2015 between, amongst others, Hargreaves Services plc and HSBC Corporate Trustee Company (UK) Limited as Security Agent.

"**Debt Documents**" has the meaning given to that term in the Intercreditor Agreement.

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Security Agent or any Receiver.

"**Discharge Date**" means the date with effect from which the Security Agent confirms to Hargreaves Services plc that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Secured Parties cancelled.

"**EC Regulation**" means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings.

"**Enforcement Party**" means any of the Security Agent, a Receiver or a Delegate.

"**Event of Default**" means an Event of Default (as defined in the Facilities Agreement) and any other default (howsoever described) under or pursuant to the Debt Documents.

"**Facilities Agreement**" means the revolving and borrowing base facilities agreement dated 31 July 2015 between, amongst others, Hargreaves Services plc as Parent, the Original RCF Borrowers and Original BBF Borrowers named therein, certain companies as original guarantors, HSBC Bank plc as Agent and BBF Agent and HSBC Corporate Trustee Company (UK) Limited as Security Agent.

"Insolvency Act" means the Insolvency Act 1986.

"Intercreditor Agreement" means the intercreditor agreement dated 31 July 2015 and made between, amongst others, Hargreaves Services plc, HSBC Bank plc as Agent and HSBC Corporate Trustee Company (UK) Limited as Security Agent.

"Party" means a party to this Charge.

"Receiver" means any receiver or administrative receiver appointed in respect of the Charged Assets (whether pursuant to this Charge, pursuant to any statute, by a Court or otherwise) and includes joint receivers.

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) at any time due, owing or incurred by (a) the Chargor and (b) each Chargor (as defined in the Debenture) to the Secured Parties (or any of them) under each or any of the Debt Documents together with all costs, charges and expenses incurred by any Secured Party in connection with the protection, preservation or enforcement of its respective rights under the Debt Documents or any other document evidencing or securing any such liabilities PROVIDED THAT **"Secured Obligations"** shall not include any obligation or liability to the extent that if it were so included this Charge (or any part of it) would give rise to financial assistance within the meaning of section 677(1) of the Companies Act 2006 unless such financial assistance is not prohibited by virtue of the provisions of sections 678, 679, 681 and 682 of the Companies Act 2006.

"Secured Parties" has the meaning given to that term in the Intercreditor Agreement (and each a **"Secured Party"**).

"Security Agent" means HSBC Corporate Trustee Company (UK) Limited, acting in its capacity as trustee for the Secured Parties (including itself) in relation to the Transaction Security Documents for the purpose of and in accordance with the terms of the Debt Documents, or such other or additional trustee or trustees as may from time to time be appointed in that capacity pursuant to the Intercreditor Agreement.

"Security Period" means the period beginning on the date of this Charge and ending on the Discharge Date.

"Shares" means all stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by the Chargor from time to time, or any in which it has an interest.

1.2 Definitions contained in Facilities Agreement

Unless a contrary indication appears each term used in this Charge which is defined in the Facilities Agreement shall have the same meaning as in the Facilities Agreement.

1.3 Construction

In this Charge:

(a) unless a contrary indication appears, a reference to:

- (i) **"assets"** includes present and future properties, revenues, rights and interests of every kind and reference to an **"asset"** includes any part or parts of such asset;
- (ii) **"guarantee"** includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (iii) **"indebtedness"** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (iv) **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality);

- (v) **"regulation"** includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (vi) **"set-off"** includes analogous rights and obligations in jurisdictions other than England and Wales;
 - (vii) the **"Security Agent"** or the **"Chargor"**, **"Party"** or **"Obligor"**, or any of the **"Secured Parties"**, shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, in the case of the Security Agent, Agent or BBF Agent any person for the time being appointed as Security Agent or Security Agents in accordance with the Intercreditor Agreement or, as the case may be, Agent or BBF Agent in accordance with the Facilities Agreement; and
 - (viii) any appointment of a Receiver under Clause 9 hereof may be made by any successor or assignee or transferee of the Security Agent, and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 14 hereof;
- (b) where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"In particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
 - (c) unless this Charge expressly states otherwise or the context requires otherwise, (a) each reference in this Charge to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Charge) and (b) each reference in this Charge to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Charge and whether amended or re-enacted since the date of this Charge);
 - (d) each reference to this Charge (or to any other agreement, instrument or deed) means, at any time, this Charge (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented, extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Charge or of any of the Debt Documents;
 - (e) the index and clause headings are for ease of reference only;
 - (f) an Event of Default is **"continuing"** in accordance with Clause 1.2(f) of the Facilities Agreement; and
 - (g) references to a **"fixed security"** shall be construed as a reference to a fixed security as defined by Section 486 of the Act as in force at the date hereof;

1.4 Incorporation of other terms

Without prejudice to the operation of any applicable term of the Facilities Agreement or any other Debt Document, the provisions of clauses 12.3 (*Default interest*), 30.7 (*Resignation and release of security on disposal*), 34.9 (*Currency of account*), 34.10 (*Change of currency*), 36.1 (*Communications in writing*), 36.3 (*Delivery*), 36.6 (*Electronic communication*), 36.8 (*English language*), 37 (*Calculations and certificates*), 38 (*Partial Invalidity*), 39 (*Remedies and waivers*), 40.2 (*Required consents*) and 40.8 (*Other Exceptions*) of the Facilities Agreement shall apply (*mutatis mutandis*) to this Charge as if set out in this Charge in full and as if any reference in any such clause to "this Agreement" were a reference to "this Charge".

2. Undertaking to pay

The Chargor, as primary obligor and not merely as surety, undertakes to the Security Agent that it will pay, discharge and perform the Secured Obligations on demand made on or at any time after the due date for payment provided in the Debt Documents and in the manner provided in the Debt Documents.

3. Floating Charge

- 3.1 The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, HEREBY GRANTS in favour of the Security Agent a floating charge over the Charged Assets.
- 3.2 The floating charge created by this Charge shall rank as provided in the Intercreditor Agreement and shall, subject to the terms of the Intercreditor Agreement and to Section 464(2) of the Act, rank in priority to any fixed security which shall be created by the Chargor after its execution of this Charge, other than a fixed security in favour of the Security Agent, and to any other floating charge which shall be created by the Chargor after its execution of this Charge and, subject as aforesaid, no such fixed security or other floating charge shall rank in priority to or equally with or postponed to the floating charge created by this Charge.
- 3.3 The Security Agent holds the benefit of this Charge on trust for the Secured Parties.
- 3.4 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Charge.

4. Continuing security

The provisions of this Charge will apply at all times (a) regardless of the date on which any of the Secured Obligations was incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

5. Further Assurance

The Chargor shall:

- 5.1 promptly do all such acts or execute all such documents (including assignments, designations, transfers, mortgages, standard securities, charges, notices and instructions) as the Security Agent or any Receiver may reasonably require (and in such form as the Security Agent or any Receiver may reasonably require) in favour of the Security Agent or its nominee(s) (a) to create, perfect or protect the Security created or intended to be created or evidenced by this Charge or for the exercise of any rights, powers, discretions and remedies of the Security Agent or any Receiver or any of its Delegates or sub-delegates provided by or pursuant to this Charge (including the giving of any notice, order or direction and the making of any filing or registration which, in any such case, such person may think expedient); and/or (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Charge; and
- 5.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent by or pursuant to this Charge.

6. Negative Pledge

- 6.1 During the Security Period, and without prejudice to the obligations in the Facilities Agreement, the Chargor shall not create, extend, or permit to subsist, any Security over any of its assets; nor may it (a) sell, transfer or otherwise dispose of any of its assets on terms that they are or may be leased to or re-acquired by an Obligor or any other member of the Group, (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms, (c) enter into any arrangement under which money, debts or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts, or (d) enter into any other preferential arrangement having a similar effect to any of the arrangements or

transactions previously described in this Clause 6.1, in any case in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- 6.2 Without prejudice to the obligations in the Facilities Agreement, Clause 6.1 does not apply to any Security or (as the case may be) Quasi-Security which is Permitted Security or a Permitted Transaction.

7. Representations and Warranties

- 7.1 The Chargor represents and warrants to the Security Agent on the date of this Charge in the terms of the Applicable Representations, in each case as if expressly set out in this Charge and so far as applicable to the Chargor or the Charged Assets. Each of the Applicable Representations is made by reference to the facts and circumstances existing at the date of this Charge or, where deemed, pursuant to Clause 7.3, to be repeated at a later date, by reference to the facts and circumstances existing at each such later date.
- 7.2 The Chargor further represents and warrants as follows:
- (a) **Commercial benefit** - It enters into this Charge in good faith and for the purposes of the promotion of the success of its business and has given due consideration to the terms and conditions of the documents evidencing the Secured Obligations and of this Charge and has satisfied itself that there are reasonable grounds for believing that by executing this Charge it will derive commercial benefit.
 - (b) **Priority of Security** - The Security created by this Charge constitutes first priority Security over the assets which are expressed to be subject to such Security (other than as contemplated by the Intercreditor Agreement) and those assets are not subject to any Security other than Permitted Security.
- 7.3 Each of the Repeating Representations and each of the further representations and warranties set out in Clause 7.2 (other than at clause 7.2(a) (*Commercial benefit*) which is not repeated) shall be deemed to be repeated on each day during the Security Period on which representations and warranties set out in clause 22 (*Representations*) of the Facilities Agreement are, or are deemed to be, made or repeated.

8. Undertakings

Throughout the Security Period, the Chargor undertakes to the Security Agent in the terms of the Applicable Undertakings, in each case so far as applicable to the Chargor or the Charged Assets (as if expressly set out in this Charge) and also in the terms of the following provisions of this Clause 8.

- 8.1 **Perform** - It will at all times comply with the terms (express or Implied) of this Charge and of all other Debt Documents.
- 8.2 **Not jeopardise Security** - It will not (and, without prejudice to Clause 8.7(d), will procure that no nominee will) do or omit to do anything, or allow anything to be done or omitted, the result of which may be in any way to depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the Security created by this Charge or the priority of its ranking as expressed in this Charge.
- 8.3 **Observe covenants** - It will observe and perform all covenants and stipulations from time to time on its part to be performed or observed and affecting any of the assets owned by it or in which it has an interest or the way in which it uses or benefits from such assets.
- 8.4 **Observe laws** - It will not do or omit to do or allow anything to be done in relation to the Charged Assets which would infringe any laws affecting (whether directly or indirectly) the Charged Assets and will comply with all notices, orders, injunctions and mandatory proposals served on it, issued or made by any local or other authority or governmental agency, or by its landlords relating to any of the Charged Assets or its use of them, and will serve within any relevant time limit any counter notice necessary or desirable to preserve the value of any such Charged Assets.
- 8.5 **Effect registrations** - It will effect all registrations, make all filings or applications and pay all Taxes, rents, fees or dues necessary to keep in full force and effect, and where necessary to

renew or extend, all the Charged Assets and the Chargor's right to make full use and enjoy the full benefit of the Charged Assets.

8.6 Collection of book debts -

- (a) The Chargor will collect in all Book Debts due to it and at any time when an Event of Default is continuing promptly upon receipt pay all those Book Debts due to it following a request from the Security Agent into such account as the Security Agent shall designate for such purpose, and pending such payment it will hold all such money upon trust for the Security Agent.
- (b) The Chargor will not, without the prior written consent of the Security Agent, charge, factor, discount or assign, save as permitted under the Facilities Agreement, any Book Debts in favour of any other person or purport to do so.

8.7 Shares and other Investments

- (a) It will, promptly upon receipt of them, deliver to the Security Agent copies of all notices, circulars, letters, reports, accounts and other communications with shareholders relating to its holding of the Shares.
- (b) It will pay all calls or other payments due and payable in respect of any of the Shares and if it fails to do so the Security Agent may pay the calls or other payments on its behalf.
- (c) Save with the prior written consent of the Security Agent or as permitted under the terms of the Facilities Agreement, it will not (a) take any action by or as a consequence of which the rights attaching to the Shares are altered or diluted or the issued capital of any of the companies whose Shares are charged by this Charge is increased, nor (b) participate in any rights issue relating to the Shares, nor (c) apply for, or consent to, the conversion of any Shares held in certificated form into uncertificated form.
- (d) Except where the Security Agent requires it to do so, it will not nominate another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.
- (e) Following an Event of Default which is continuing, if the Security Agent requires it to do so, it will take all steps within its power to procure that any of the companies to which the Shares relate will make such changes to its respective articles of association as may be necessary, pursuant to section 145 of the Companies Act 2006, to permit it to nominate the Security Agent or a nominee of the Security Agent to exercise or enjoy all of any of the Chargor's rights as a registered holder of the Shares of such company.
- (f) In respect of any Shares in uncertificated form which it subsequently acquires, it will provide such information, give such instructions and enter into such documents as the Security Agent may reasonably require to perfect the Security created by this Charge over such Shares.

8.8 Centre of main interests - It will not move its COMI, nor have any Establishment, outside the United Kingdom.

8.9 Deposit of documents - It will promptly at the Security Agent's request deposit with the Security Agent (or as the Security Agent directs) (a) all deeds and documents of title relating to any of its freehold, heritable or leasehold property, including counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Security Agent to enforce the Security created by this Charge, (b) all policies of insurance in respect of which the proceeds of any claims are charged pursuant to this Charge and (c) all such other documents relating to the Charged Assets as the Security Agent may from time to time reasonably require.

8.10 Retention of documents - The Security Agent may retain any document delivered to it pursuant to Clause 8.9 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason, the Security Agent ceases to hold any such document before such time, the Security Agent may, by notice to the Chargor, require that the relevant document be

redelivered to it and the Chargor shall immediately comply (or procure compliance) with such notice.

- 8.11 **Power to remedy** - If the Chargor fails to comply with any of the covenants and undertakings set out or referred to in Clauses 8.1 (*Perform*) to 8.10 (*Retention of documents*) inclusive, it will allow (and irrevocably authorises) the Security Agent and/or such persons as the Security Agent nominates to take on behalf of the Chargor such action (including the making of payments) as is necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.
- 8.12 **Indemnity** - It will indemnify the Security Agent and will keep the Security Agent indemnified against all costs, Taxes, losses and liabilities properly incurred by the Security Agent as a result of any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Charge and in connection with the exercise by the Security Agent of its rights contained in Clause 8.11 (*Power to remedy*). All sums the subject of this indemnity will be payable by the Chargor to the Security Agent on demand.

9. Enforcement

9.1 At any time after:

- (a) the occurrence of an Event of Default and for so long as it is continuing;
- (b) the making of an application for the administration (whether out of court or otherwise) of the Chargor or the giving or filing of any notice in relation to the appointment of an administrator of the Chargor; or
- (c) any request from the Chargor that a Receiver be appointed,

the power to appoint a Receiver of the Charged Assets shall be immediately exercisable in relation to the Security created by the Chargor by or pursuant to this Charge, and the Security Agent may then by instrument in writing appoint any person or persons (if more than one with power to act both jointly and severally) to be a Receiver of the Charged Assets. In addition and without prejudice to the foregoing provisions of this sub-clause, in the event that any person appointed in pursuance hereof to be a Receiver as aforesaid shall be removed by a Court or shall otherwise cease to act as such, then the Security Agent shall be entitled so to appoint another person as Receiver in his place.

9.2 A Receiver so appointed shall have and be entitled to exercise all the powers conferred upon such a Receiver by the Insolvency Act and in addition to and without limiting these powers, such Receiver shall have power to:

- (a) implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Charged Assets;
- (b) make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- (c) promote or procure the formation of any new company or corporation;
- (d) subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
- (e) sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Charged Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- (f) sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;

- (g) convene an extraordinary general meeting of the Chargor;
- (h) acquire any property on behalf of the Chargor;
- (i) in respect of any assets of the Chargor situated in England and Wales, exercise in addition to the foregoing all the powers conferred by the Insolvency Act or any other enactment or under law on receivers appointed in that jurisdiction; and
- (j) do all such other acts and things as he may consider necessary or desirable for protecting or realising the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Charge, and exercise in relation to the Charged Assets or any part thereof all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same; and use the name of the Chargor for all and any of the purposes aforesaid.

9.3 In the exercise of the powers hereby conferred any Receiver may sever and sell plant machinery or other fixtures separately from the property to which they may be annexed.

10. Office of Receiver

- 10.1 Any Receiver appointed under Clause 9 (*Enforcement*) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses, and the Security Agent shall not incur any liability therefor (either to the Chargor or any other person) by reason of the Security Agent making his appointment as such Receiver or for any other reason whatsoever.
- 10.2 Any Receiver appointed under Clause 9 (*Enforcement*) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of the receivers of his firm. Such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Obligations and accordingly be secured on the Charged Assets under the floating charge created by this Charge.

11. Payments, Accounts and Application Of Proceeds

- 11.1 **Right of appropriation** - Subject to the provisions of Clause 11.8 (*Recoveries by Receiver*), the Security Agent is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.
- 11.2 **No set-off by Chargors** - The Chargor shall not exercise any right of set-off or counterclaim it might have in respect of any payment due to the Security Agent under this Charge.
- 11.3 **Security Agent's rights of set-off** - The Security Agent may, at any time after this Charge has become enforceable, and without notice (a) combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Security Agent, (b) set-off or transfer any sums standing to the credit of any one or more of such accounts, and/or (c) set-off any other obligation owed by the Security Agent to the Chargor (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations; and if any amount is in a different currency from the amount against which it is to be set-off, the Security Agent may convert either amount (or both) at any reasonable time and at any reasonable rate. The Security Agent shall notify the Chargor in writing that any such transaction has taken place.
- 11.4 **Suspense Account** - The Security Agent may, at any time, credit to a suspense account any money received by it under this Charge, to be held for so long as and on such terms as the Security Agent may determine pending its application towards paying or discharging the Secured Obligations.
- 11.5 **New account** - If the Security Agent receives notice of a subsequent mortgage or charge relating to the Charged Assets, it will be entitled to close any account and to open a new

account in respect of the closed account. If the Security Agent does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

- 11.6 **Time deposit** - Without prejudice to the provisions of Clause 11.3 (*Security Agent's rights of set-off*), if at any time the Chargor has made a deposit with the Security Agent on terms that it will be repaid on a specified date (a "Time Deposit") then: (a) if the Security Agent has made any demand under Clause 2 (*Undertaking to pay*), it may vary the terms of such Time Deposit so that it becomes repayable immediately or on any other date before such specified date; or (b) if an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due before such specified date, the Security Agent may renew such Time Deposit for such further maturity as the Security Agent in its absolute discretion determines.
- 11.7 **Calculations** - The Security Agent's calculation of any amount payable by the Chargor under this Charge at any time will be conclusive (unless it has made an obvious mistake).
- 11.8 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in accordance with Clause 17 (*Application of Proceeds*) of the Intercreditor Agreement.
- 11.9 **Tax gross-up** - The provisions of clause 16.2 (*Tax gross-up*) of the Facilities Agreement shall apply to any payments made by the Chargor under or pursuant to this Charge.
- 11.10 **Currency of payment** - No payment to the Security Agent (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Security Agent shall have received payment in full in the relevant currency specified in clause 34.9 (*Currency of account*) of the Facilities Agreement. To the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security created by this Charge to recover the amount of the shortfall.
- 11.11 **Currency conversion** - All money received or held by the Security Agent or any Receiver under this Charge may be converted into such other currency as the Security Agent considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Agent's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

12. Protection of Third Parties

- 12.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether the Secured Obligations have become payable or whether any of the powers which such Enforcement Party has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Charge.
- 12.2 **Receipt conclusive** - The receipt of the Security Agent or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Charged Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Agent or any Receiver.

13. Protection of Security Agent

- 13.1 **Security Agent's receipts** - The Security Agent shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Security Agent, acting reasonably, believes to be entitled) in accordance with the requirements of this Charge.
- 13.2 **Exclusion of liability**
 - (a) No Enforcement Party will be liable to the Chargor for any expense, loss, liability or damage incurred by the Chargor arising out of the exercise by such Enforcement Party of its rights or powers or any attempt or failure to exercise those rights or

powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

- (b) The Chargor may not take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Charge.

- 13.3 **Effect of possession** - If the Security Agent or any Receiver enters into possession of the Charged Assets or any of them, this will not oblige either the Security Agent or the Receiver to account as mortgagee in possession (or, in Scotland, heritable creditor in possession) or, subject to any applicable provisions of the Intercreditor Agreement, to account for any loss on realisation or enforcement of rights or for any default or omission for which a mortgagee in possession (or, in Scotland, heritable creditor in possession) might be liable, and if at any time the Security Agent enters into possession of the Charged Assets or any of them it may at any time at its discretion go out of such possession.
- 13.4 **Chargor's indemnity** - The Chargor agrees with the Security Agent to indemnify each Enforcement Party on demand against any costs, Taxes, losses, expenses, liabilities or damage incurred by it in respect of (a) the taking, holding, protection or enforcement of the Security created by this Charge, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers, discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Charge or under any appointment duly made under the provisions of this Charge, save to the extent that such costs, Taxes, losses, liabilities or damage are directly caused by the gross negligence or wilful misconduct of that Enforcement Party.

14. Power of Attorney

- 14.1 The Chargor irrevocably appoints the Security Agent and each Receiver and any person nominated for the purpose by the Security Agent or the Receiver (in writing, under hand, signed by an officer of the Security Agent or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in Clause 14.2.
- 14.2 The power of attorney granted in Clause 14.1 allows the Security Agent, the Receiver or the relevant nominee, in the name of the Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by the Chargor under this Charge and to execute and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this Charge or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Security Agent or the Receiver under, or otherwise for the purposes of, this Charge and which, if no Event of Default is continuing, the Chargor has failed to do within five Business Days of receipt of notice from the Security Agent, Receiver or nominee (as appropriate) requiring it to do so.
- 14.3 The Chargor covenants with the Security Agent to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 14.

15. Miscellaneous

- 15.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Charge are in addition to (and not instead of) powers, rights and remedies under law.
- 15.2 If an Enforcement Party fails to exercise any power, right or remedy under this Charge or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.
- 15.3 The Security Agent may decide when and how to apply any payments and distributions received for its own account under this Charge, and also, as between the Security Agent and

the Chargor, whether and, if so, when, how and to what extent (a) to exercise its rights under this Charge and (b) to exercise any other right it might have in respect of the Chargor (or otherwise) without, in any case, the Chargor having the right to control or restrict the Security Agent's exercise of this discretion.

- 15.4 No provision of this Charge will interfere with the Security Agent's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs).
- 15.5 The Chargor authorises the holder of any prior or subsequent Security to provide to the Security Agent, and the Security Agent to receive from such holder, details of the state of account between such holder and the Chargor.
- 15.6 The Chargor shall not assign, novate or otherwise deal with its rights or obligations under or interests in this Charge, except with the prior written consent of the Security Agent.
- 15.7 Save as otherwise provided in the Facilities Agreement and the Intercreditor Agreement, the Security Agent may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Charge.
- 15.8 The Security Agent may disclose any information about the Chargor, the Charged Assets and/or this Charge to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Charge, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Charge in the same way as if it had been an original party to this Charge or as otherwise permitted by Clause 41 (*Confidentiality*) of the Facilities Agreement.
- 15.9 If, at any time, there has been a release, settlement or discharge of the Chargor's obligations under this Charge and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Security Agent in respect of any of the Secured Obligations (whether under this Charge or otherwise) is void, is set aside or is otherwise affected then the Chargor's obligations under this Charge shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or other right) had not been held by the Security Agent; and accordingly (but without limiting the Security Agent's other rights under this Charge) the Security Agent shall be entitled to recover from the Chargor the amount of any such payment as if such payment, settlement or discharge had not occurred.
- 15.10 If the Security Agent, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is reasonably likely to be avoided or ordered to be refunded or reduced for the reasons set out in Clause 15.9, then for the purposes of this Charge such amount shall not be considered to have been irrevocably paid.
- 15.11 The Security created by this Charge has been made for securing (in addition) further advances made by the Secured Parties under the Debt Documents.
- 15.12 To the extent that the Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to the Chargor or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- 15.13 On the Discharge Date (but subject to Clauses 15.9 and 15.10) the Security Agent shall, at the request and cost of the Chargor, execute and do all deeds, acts and things as may be necessary to release the Charged Assets from the Security created by this Charge.
- 15.14 The obligations of the Chargor under Clause 2 (*Undertaking to pay*) are unconditional and neither the provisions of this Charge nor the obligations of the Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any

obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) the Chargor or any other person, (ii) any of the Secured Obligations, (iii) any Security, guarantee or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.

- 15.15 The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Charge. Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent or any Receiver may think fit. Neither the Security Agent nor any Receiver will be in any way responsible or liable to the Chargor or any other person for any cost, expense, loss or liability arising from any act, omission, default, or misconduct on the part of any delegate or sub-delegate.
- 15.16 The Security Agent undertakes to the Chargor that it shall do all such acts or execute all such documents as the Chargor may reasonably specify to release from the security created by this Charge:
- (a) any lease in respect of which the creation of such security is expressed to be prohibited or subject to the consent of a superior landlord; and
 - (b) any Shares the creation of security over which is prohibited howsoever,

in each case, promptly following receipt of any notice (in the form of a certificate signed by a director of the Chargor (upon which the Security Agent shall be entitled to rely without liability to any person)) from the Chargor that forfeiture or other proceedings or, in the case of shares, actions under a shareholders agreement or arrangement that would be adverse to the commercial interests of the Group have been threatened as a result of the creation of such security. The Chargor shall, on request of the Security Agent, pay all reasonable costs incurred by the Security Agent in doing so.

16. Communications

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Charge is:

- 16.1 in the case of the Chargor and the Security Agent those given for it in the signature pages of this Charge; and
- 16.2 in the case of each Receiver and each Delegate, those notified in writing to the Security Agent (whether in that capacity or in any other capacity) by such Receiver or Delegate (or by the Security Agent on its behalf) as soon as practicable after its appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Agent (or as the Agent may notify to the other Parties, if a change is made by the Agent) by not less than 5 Business Days' notice.

17. This Charge

- 17.1 The Chargor has entered into this Charge in consideration of the Secured Parties or some of them agreeing to provide (or to continue to provide) finance facilities to, amongst others, the Chargor on the terms agreed in the Debt Documents.
- 17.2 If there is any conflict between the provisions of the Facilities Agreement, the Intercreditor Agreement and the provisions of this Charge, the provisions of the Facilities Agreement or the Intercreditor Agreement, as appropriate, shall prevail.
- 17.3 If any Party is not bound by this Charge (or any part of it) for any reason, this does not affect the obligations of each other Party under this Charge (or under the relevant part).

- 17.4 This Charge is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Security Agent may now or at any time after the date of this Charge hold for or in respect of the Secured Obligations.
- 17.5 This Charge and every counterpart is the property of the Security Agent.

18. Counterparts, Delivery and Effective Date

- 18.1 This Charge may be executed in any number of counterparts and by each of the parties on separate counterparts.
- 18.2 Where executed in counterparts:
- (a) this Charge will not take effect until each of the counterparts has been delivered;
 - (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
 - (c) the date of delivery may be inserted in the testing clause in the blank space provided for the effective date of this Charge.

19. Governing Law and Jurisdiction

- 19.1 This Charge and any non-contractual obligations arising out of or in connection with it are governed by, and construed in all respects in accordance with, the law of Scotland.
- 19.2 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including a dispute regarding the existence, validity or termination of this Charge) and any non-contractual obligations arising out of or in connection with it (a "Dispute").
- 19.3 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary.
- 19.4 This Clause 18 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

20. Consent to Registration

A certificate signed by an officer of the Security Agent shall, in the absence of manifest error, conclusively determine the Secured Obligations at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Charge and of any such certificate for preservation.

IN WITNESS WHEREOF this Charge between the Chargor and the Security Agent consisting of this and the 13 preceding pages is executed in counterpart by the parties as undernoted, with an effective date of 9 February 2016:

Subscribed for and on behalf of

Earls Gate Energy Centre Limited

at DURHAM (place of signing)

on 3 FEB 2016 (date of signing)

by (date of signing)

IAIN COCKBURN

(Print Full Name)

(Sign)

Director

before this witness

GAYLE MULVANEY

(Print Full Name)

Director

(S)

Witness

CLIFFE HOUSE

(Address)

CLIFF ROAD

Witness

SUNDERLAND

Address: West Terrace, Esh Winning, Durham, DH7 9PT

Fax: 0191 373 3777

Attention: Gayle Mulvaney

Subscribed for and on behalf of

HSBC Corporate Trustee Company
(UK) Limited

at LONDON (place of signing)
on 04 FEBRUARY 2016 (date of signing)
by James McComb

(Print Full Name)

(Sign)

Authorised
Signatory

before this witness

KATHERINE HENSBY
(Print Full Name) ~~Authorised~~
~~Signatory~~

(Sign)

Witness

(Address) HSBC Bank plc
8 Canada Square
London Witness
E14 5HQ

Address: HSBC Corporate Trustee Company (UK) Limited, 8 Canada Square, London E14 5HQ

Fax: +44(0) 20 7991 4351

Attention: CTLA Trustee Services Administration